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**IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA  
FIFTH APPELLATE DISTRICT**

THE PEOPLE,

Plaintiff and Respondent,

v.

JOSE ANTONIO ACOSTA,

Defendant and Appellant.

F068607

(Fresno Super. Ct. No. F13906890)

**OPINION**

**THE COURT\***

APPEAL from a judgment of the Superior Court of Fresno County. Jon N. Kapetan, Judge.

John L. Staley, under appointment by the Court of Appeal, for Defendant and Appellant.

Office of the Attorney General, Sacramento, California, for Plaintiff and Respondent.

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\* Before Gomes, Acting P.J., Detjen, J. and Franson, J.

## **INTRODUCTION**

Appellant/defendant Jose Antonio Acosta pleaded guilty to second degree robbery and admitted a firearm enhancement, and was sentenced to 15 years in prison pursuant to a negotiated disposition. On appeal, his appellate counsel has filed a brief that summarizes the facts with citations to the record, raises no issues, and asks this court to independently review the record. (*People v. Wende* (1979) 25 Cal.3d 436 (*Wende*).) We affirm.

## **FACTS**

On July 19, 2013, 20-year-old Jesse F. (Jesse) and 19-year-old Angel V. (Angel) were sitting in their car when defendant approached them and demanded Jesse's cell phone. Jesse refused. Defendant placed his hand behind his back as if he was about to pull a gun, and again demanded Jesse's cell phone. Jesse again refused.

Defendant produced a semi-automatic firearm, ordered both men out of the vehicle, and told them to walk into a nearby alley. The men were frightened and complied. As they approached the alley, defendant again demanded Jesse's cell phone. Jesse removed the cell phone from his pocket, and \$600 in cash came out with the phone. Defendant pointed the gun at Angel and demanded his cell phone. Angel became angry and refused. Defendant repeatedly threatened to shoot Angel if he did not produce his cell phone. Angel again refused.

Defendant ordered the men to return to their car. The men ran away and got into their car. Defendant ran into the alley. The men chased defendant in their car. Defendant turned around and fired three or four rounds at the car. Defendant jumped onto an alley fence, and the car drove past him and crashed in the alley. Defendant fired three more rounds at the car, and two rounds hit the front passenger door and barely missed Angel.

As he was shooting at the men and their car, defendant managed to shoot himself in the foot. Defendant ran away and left a blood trail to his cousin's residence. He hid his weapons and ammunition at his cousin's house.

Defendant was taken into custody. He claimed he was trying to sell a gun to the two victims, and he decided to steal their cell phones. Defendant admitted he fired at the men's car as it chased him in the alley. Defendant later claimed an older cousin "bullied" him into committing the offense but he would not identify this person.

### **Procedural History**

On July 23, 2013, a felony complaint was filed in the Superior Court of Fresno County charging defendant with second degree robbery (Pen. Code, § 211),<sup>1</sup> with the special allegation that he personally and intentionally discharged a firearm (§ 12022.53, subd. (c)). Defendant pleaded not guilty.

On October 16, 2013, the parties stipulated to amend the complaint to allege the personal use of a firearm pursuant to section 12022.53, subdivision (b). Thereafter, defendant pleaded guilty to robbery and admitted the newly alleged firearm enhancement pursuant to a negotiated disposition for a term of 15 years.

On November 13, 2013, the court heard and denied defendant's motion to dismiss his appointed attorney pursuant to *People v. Marsden* (1970) 2 Cal.3d 118. The court imposed the upper term of five years for robbery, plus a consecutive 10-year term for the section 12022.53, subdivision (b) firearm enhancement, for a total of 15 years. The court ordered defendant, who was 16 years old, to be housed in the Division of Juvenile Justice pursuant to Welfare and Institutions Code section 1731.5.<sup>2</sup>

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<sup>1</sup> All further statutory citations are to the Penal Code unless otherwise indicated.

<sup>2</sup> Defendant was 16 years old and subject to criminal prosecution given the charges, and his plea to robbery and admission of the personal discharge of a firearm. (Welf. & Inst. Code, § 707, subds. (d)(1) & (d)(2)(B); subds. (b)(3) & (b)(17)).

On December 20, 2013, defendant filed a notice of appeal; he did not request or obtain a certificate of probable cause.

### **DISCUSSION**

As noted above, defendant's counsel has filed a *Wende* brief with this court. The brief also includes the declaration of appellate counsel indicating that defendant was advised he could file his own brief with this court. By letter on March 10, 2014, we invited defendant to submit additional briefing. To date, he has not done so.

After independent review of the record, we find that no reasonably arguable factual or legal issues exist.

### **DISPOSITION**

The judgment is affirmed.